

FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 96M-112

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In re Applications of)	WT DOCKET NO. 96-41	
)		
LIBERTY CABLE CO., INC.)		
)		
For Private Operational Fixed)	File Nos:	
Microwave Service Authorization	)	708777	WNTT370
and Modifications	)	708778, 713296	WNTM210
	)	708779	WNTM385
New York, New York	)	708780	WNTT555
	)	708781, 709426, 711937	WNTM212
	)	709332	(NEW)
	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	(NEW)
	)	717325	(NEW)

MEMORANDUM OPINION AND ORDER

Issued: May 10, 1996

;

Released: May 13, 1996

Background

1. This is a ruling on Wireless Telecommunications Bureau's Motion To Compel Liberty Cable Co., Inc. To Respond To Interrogatories that was filed on April 30, 1996. Interrogatories were served on April 3, 1996. Liberty served Responses and Objections in the early evening of April 15, 1996. The Bureau opened negotiations with Liberty and a joint request of the parties for additional time within which to file a motion to compel, if necessary, was granted. See Order 96M-86, released April 25, 1996. On April 25, 1996, in the late afternoon, Liberty served Supplemental Responses. Not satisfied with Liberty's disclosures, on April 29, 1996¹, the Bureau filed its Motion To Compel.

2. After the first Prehearing Conference held on March 26, 1996, the Presiding Judge believed that the parties were prepared to expedite discovery. The issues set by the Commission were based on filings and alleged failures to file/disclose which appear to be issues that should allow for fact stipulations and as to which there should be no need for extensive discovery. The interrogatories were authorized to identify transactional witnesses and witnesses

¹ April 29, 1996, was the last day under the extension within which the parties were authorized to file Motions To Compel. All of the parties have done so and there have been no depositions noticed.

having direct knowledge of relevant facts.² The primary witnesses should be known to the Bureau and Liberty has agreed to make them available for deposing on short notice.

3. Liberty also represents that there are 15,000 responsive documents which have been produced in discovery. Under the circumstances, it would seem that depositions could move apace. However, the Bureau must be adequately informed and it does appear that Liberty has been less than forthright in identifying persons who appear to have substantial information about the issues. the full identify of these persons is essential information for deposition preparation.³

Liberty's Deficiencies

4. Liberty has listed names of persons who have relevant information. But Liberty has refused to furnish home addresses under a claim of privacy and has insisted that certain witnesses may only be contacted through the witnesses' attorneys. There is no authority or precedent for imposing such limitations sua sponte unless there is a protective order obtained. The parties are encouraged to agree to any reasonable ground rules in advance and the witnesses are to be afforded all reasonable courtesies. But the Bureau is not to be hampered in reaching witnesses who have relevant information.

5. Liberty has failed to describe entities/businesses which have provided services for Liberty within the relevant market in the relevant time period. Liberty has also failed to disclose the identity of employees of those entities/businesses which dealt with Liberty. The Bureau is entitled to that information which must be provided.

Further Responses Required of Liberty

6. With respect to Interrogatory No.1: The Bureau seeks information concerning persons and entities who are and may be affiliated with Liberty but who may not have participated in or have any knowledge of any of the

² The burden of proof is a preponderance of the evidence which need not rise to the level of clear and convincing.

³ It is important for the parties to be aware, and particularly the party whose license applications are at stake here, that the Rules of Practice permit and encourage presiding judges to make adverse findings against noncomplying parties. See 47 C.F.R §1.323(d).

decisions involving the issues.⁴ Liberty may limit its answer to the identity of those persons who have control or share or participate in the control of the operations of Liberty during the relevant period (e.g. controlling shareholders, officers and directors). For each person identified, Liberty must comply with the Bureau's definition of "identify" Liberty must also state the number of shares of Liberty stock owned by each person identified and the date and manner in which it was acquired.⁵ Based on Liberty's representations in its Reply to the Bureau's Motion To Compel, there are only four persons for which this information must be supplied: Howard Milstein, Edward Milstein, Philly's Milstein and the belatedly disclosed President Liberty, Peter O. Price.

7. With respect to Interrogatories Nos.2-16: As to each person, business and/entity which Liberty has identified by name, Liberty must also provide the following information in responsive written form:

- (a) current address, telephone number and description of the type(s) of business in which engaged;
- (b) description of how the entity's or person's business may be related to Liberty (e.g. what jobs did they do);
- (c) identification and last known address and telephone number of each of the persons at the entities who had substantial contacts with Liberty (e.g. not including delivery persons); and
- (d) what was and what is the relationship between each such person or entity and Liberty.

8. With respect to Liberty's Supplemental Responses: Liberty must state the dates of employment of each identified past and present employee and Liberty must indicate the past and present employees and agents of Liberty (including attorneys, accountants and business advisers) who have any knowledge or who in any way directly or indirectly participated in any of the activities alleged in or related to the issues.

⁴ The scope of Interrogatory No. 1 would be relevant in discovery related to a real party-in-interest issue. But the issues that were set by the Commission in March, 1996, are narrow issues of fact that would not require, at the present time, discovery of the universe of the ownership possibilities through interrogatories that are for the purpose of identifying deposition witnesses. But the Bureau and the other parties and the Presiding Judge are entitled to a response from Liberty which clearly provides the identity of each person (including position title) and entity sharing in the control of the decisions and operations of Liberty at the present and during the relevant period of time.

⁵ The universe of shareholders, owners, investors etc. since 1991 should be available to the Bureau in documents and filings with the Commission. And the persons identified by Liberty may be voir dired in depositions about who owns and controls Liberty.

Order

Accordingly, IT IS ORDERED in accordance with the foregoing that the Wireless Telecommunications Bureau's Motion To Compel Liberty Cable Co., Inc. To Respond To Interrogatories IS GRANTED in part.⁶

IT IS FURTHER ORDERED that Liberty Cable Co., Inc. (now known as Bartholdi Cable Co., Inc.) SHALL COMPLY by furnishing the additional information in Further Responses that are to be delivered to Bureau counsel in writing, hand delivery, by 4:00 p.m. on or before May 14, 1996.⁷

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel", written in a cursive style.

Richard L. Sippel
Administrative Law Judge

⁶ Copies of this Order were faxed to counsel in the a.m. of the date of issuance.

⁷ Copies of Liberty's Further Response also must be delivered to Washington, D.C. counsel of other parties by 5:00 p.m.